

## APPEALS COMMITTEE

1.00 P.M.

7TH DECEMBER 2017

**PRESENT:** Councillors Claire Cozler (Chairman), Terrie Metcalfe (Vice-Chairman), Tracy Brown (substitute for Janice Hanson), Mel Guilding (substitute for Helen Helme) and Joan Jackson

Apologies for Absence:

Councillors Jon Barry, Janice Hanson and Helen Helme

Officers in Attendance:

Maxine Knagg	Tree Protection Officer
Angela Parkinson	Senior Solicitor
Becky Firth	Legal Assistant
Jane Glenton	Democratic Support Officer

### 8 SITE VISITS

Prior to commencement of the meeting, site visits were undertaken in response to objections received to Tree Preservation Order No. 621 (2017) – Land South of Bank Well, The Row, Silverdale and Tree Preservation Order No. 622 (2017) – 57 Thirlmere Road, Lancaster.

The following Members were present on the site visits:

Councillors Claire Cozler (Chairman), Terrie Metcalfe (Vice-Chairman), Tracy Brown, Mel Guilding and Joan Jackson.

Officers in Attendance:

Maxine Knagg	- Tree Protection Officer
Jane Glenton	- Democratic Support Officer

### 9 MINUTES

The Minutes of the meeting held on 26<sup>th</sup> October 2017 were signed by the Chairman as a correct record.

### 10 ITEMS OF URGENT BUSINESS AUTHORISED BY THE CHAIRMAN

There were no items of urgent business.

### 11 DECLARATIONS OF INTEREST

There were no declarations of interest.

## MATTERS FOR DECISION

**12 TREE PRESERVATION ORDER NO. 621 (2017) - BANK WELL, THE ROW, SILVERDALE**

The Committee received the report of the Chief Officer (Legal and Governance) to enable Members to consider the objection received to Tree Preservation Order No. 621 (2017) relating to an area of woodland trees located at land south of Bank Well, The Row, Silverdale and identified as A4, and thereafter whether or not to confirm the Order.

It was reported that Tree Preservation Order No. 621 (2017) had been made following a concern being reported to the Council that trees had recently been removed from the land in question, to the detriment of the site and wider locality.

In determining whether or not to confirm Tree Preservation Order No. 621 (2017), Members heard the representations of Mr. Wales, the Appellant, and the Tree Protection Officer, on behalf of Lancaster City Council.

***Mr. S. P. Wales, the Appellant***

Mr. Wales informed Members that the area in question was the private garden to his property, 12 The Row, and not part of Burton Well Limestone Pavement Biological Heritage Site, as stated. As such, there was no public amenity to the land.

He had no objection to a Tree Preservation Order being made on named, individual trees within his garden, or to meeting with a Council representative to agree which trees needed protection.

A blanket Tree Preservation Order on the land would deprive him of the right to enjoy his garden and give him less rights than his neighbours, who could remove or cut back trees in their gardens without permission.

Mr. Wales advised Members that the five trees recently removed from his garden had been felled by North West Electricity to clear a safe path for their mains electricity cable, which ran from two posts within his grounds.

Over the last four to five years, he had removed a number of trees from his garden, most of which were either dead, or with little evidence of new growth, or in a poor state.

Some of the trees currently in his garden were growing at an angle, and overhanging The Row and thus interfering with traffic. The branches of the oak by the garage were dangerous and several other trees had suffered storm damage and required work.

Following Mr. Wales's representation, Members of the Committee had the opportunity to question Mr. Wales on his representation.

Once there were no further questions, the Chairman asked the Tree Protection Officer to give her representation.

***Lancaster City Council's Tree Protection Officer***

The Tree Protection Officer informed Members that under Section 198 of the Town and Country Planning Act 1990, the Local Planning Authority may make a Tree Preservation Order in respect of a tree or group of trees if it appeared that it was expedient in the interests of amenity to make provision for the protection of trees in their area.

Following a concern having been reported to the Council regarding trees having recently been removed from the said land, upon inspection it had been apparent that a small number of large, mature trees had recently been felled.

There was evidence across the site that there had been a gradual and progressive removal of woodland trees over an estimated period of three to four years, resulting in an entire loss of woodland. The condition and discolouration of a relatively high number of old tree stumps scattered across the site indicated a period of several years over which they were likely to have been felled. There was no evidence of new tree planting within the site.

Members were advised that the Forestry Commission set limitations to control the rate in which woodland trees were felled. An individual was able to remove up to 5 cubic metres of trees in a quarterly calendar period without the need for a Felling Licence from the Forestry Commission. However, if an individual felled trees below the requirement for a Felling Licence, relatively large volumes of trees could cumulatively be felled within a site over a number of years.

The City Council considered the remaining woodland trees to be under threat from removal, and Tree Preservation Order No. 621 (2017) had been made on 15<sup>th</sup> August 2017, in the interest of public amenity value and wildlife benefit.

A Tree Evaluation Method for Preservation Orders (TEMPO) had been used to demonstrate a structured and consistent approach to the assessment of the trees and woodland. A TEMPO score of 15+ had been attained, supporting the protection of the trees with a Tree Preservation Order.

One letter of objection had been received from the land owner, Mr. Wales, dated 25<sup>th</sup> July 2017, and Mr. Wales had confirmed his objection in a letter dated 9<sup>th</sup> October 2017.

Mr. Wales had submitted a Pre-Application Advice request, referenced as 17/01043/ONE relating to the erection of a detached dwelling on the land in question, which the Council had considered unlikely to be acceptable for a range of planning reasons, including the potential impact upon existing trees.

It was recommended that Tree Preservation Order No. 621 (2017) be confirmed with modification to change the current designation from Area (A1) to that of Woodland (W1). The Area designation had been used in an emergency scenario to provide immediate protection, pending further consideration.

Members were advised that the woodland designation would ensure that all trees present at the time of the Order being made would be protected and all subsequent new generations of trees of whatever species were also protected, which was essential to the

re-establishment and continuation of this important and biologically sensitive area of woodland established within Arnside & Silverdale Area of Outstanding Natural Beauty and Burton Well Limestone Pavement Biological Heritage Site and Woodland.

Following the Tree Protection Officer's representation on behalf of Lancaster City Council, Members of the Committee had the opportunity to question the Tree Protection Officer on her representation.

The Appellant, Mr. Wales, then had the opportunity to reply.

***(The Tree Protection Officer and the Appellant, Mr. Wales, left the meeting room whilst the Committee made its decision in private.)***

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 621 (2017) -
  - (a) Without modification;
  - (b) Subject to such modification as is considered expedient.
- (2) Not to confirm Tree Preservation Order No. 621 (2017).

It was proposed by Councillor Metcalfe and seconded by Councillor Guilding:

"That Tree Preservation Order No. 621 (2017) be confirmed, subject to the following modification:

Change the designation from the temporary emergency area (A1) designation to that of a woodland designation (W1)."

Upon being put to the vote, 4 Members voted in favour of the proposal, with 1 abstention, whereupon the Chairman declared the proposition to be carried.

***(The Tree Protection Officer and the Appellant, Mr. Wales, returned to the meeting room for the decision to be announced.)***

***Resolved:***

That Tree Preservation Order No. 621 (2017) be confirmed, subject to the following modification:

Change the designation from the temporary emergency area (A1) designation to that of a woodland designation (W1).

**13 TREE PRESERVATION ORDER NO. 622 (2017) - 57 THIRLMERE ROAD, LANCASTER**

The Committee received the report of the Chief Officer (Legal and Governance) to enable Members to consider the objection received to Tree Preservation Order No. 622 (2017) located at 57 Thirlmere Road, Lancaster, and thereafter whether or not to confirm the Order.

It was reported that the tree in question was a single mature cherry tree established within the rear garden of 57 Thirlmere Road, Lancaster, identified as T1. T1 was close to the boundary line with 55 Thirlmere Road and the branches extended beyond the boundary line.

In determining whether or not to confirm Tree Preservation Order No. 622 (2017), Members heard representations from Mr. and Mrs. McDonnell, the Appellants, Mr. Fitton, the Supporter, and the Tree Protection Officer, on behalf of Lancaster City Council.

***Mr. and Mrs. McDonnell, the Appellants***

Mr. and Mrs. McDonnell informed Members that Mr. Fitton had installed a new perimeter fence between the boundary of their two properties, and undertaken extensive landscaping to his garden. During this time, the branches and roots of T1 had been chopped and cut, and put on the path throughout the garden of 57 Thirlmere Road.

Members were advised that the stump to T1 was approximately nine yards from their house. Part of it was based on their property. The new fence had been adapted to fit around the tree because of the tree's size and location. The branches from T1 were within a yard from their house wall and overhung the boundary fence by approximately six yards, which caused them concern, due to fears regarding the branches becoming unstable and causing damage to their property and injury to residents, their young grandchildren and pet dog.

T1 had caused damage to their garden by lifting their flagging by three inches and causing many of the flag stones to crack. The tree roots could cause subsidence issues to their property if not dealt with.

Mr. and Mrs. McDonnell advised that they had been looking for a new shed over the past few years, but had been unable to purchase one due to not being able to position it where they would like to in their garden, due to the roots and branches from T1. Also, renovation to their garden had been almost impossible owing to the roots from T1 lifting the ground.

The branches of T1 were close to their two telephone wires, which they felt was unsafe and affected the quality of the sound of their landline. The roots were very near to two manholes and drain systems, and had possibly invaded them, which they felt needed consideration. T1 also affected the quality of light from their rear windows.

Following consultation with the Chairman and with the agreement of the Committee, the Appellants, Mr. and Mrs. McDonnell, circulated papers to Members and the Supporter, Mr. Fitton, in support of their objection, which were considered by the parties.

After Mr. and Mrs. McDonnell's representation, Members of the Committee had the opportunity to question Mr. and Mrs. McDonnell on their representation.

Once there were no further questions, the Chairman asked the Supporter, Mr. Fitton, to give his representation.

***Mr. Fitton, the Supporter***

Mr. Fitton advised Members that T1 had been in the garden of 57 Thirlmere Road for over 46 years and provided important nesting and foraging areas for birds, such as blackbirds, magpies, doves and other species, and food for wildlife, such as hedgehogs. T1 also provided fruit, greenery and blossom every year.

T1 had also been present in the garden of number 57 Thirlmere Road when the Appellants had moved into number 55 Thirlmere Road, approximately 24 years ago.

Members were advised that Mr. Fitton had witnessed Mr. McDonnell hacking at the trunk of the tree and pouring kerosene or paraffin on to the exposed trunk in an attempt to kill the tree.

Mr. McDonnell had complained about leaves and fruit from T1 falling into his garden and had asked for T1 to be cut down. Mr. Fitton had informed Mr. McDonnell that he would not cut the tree down, but would manage the tree by having it professionally trimmed. Because of this, Mr. McDonnell had refused to maintain the boundary fence.

Mr. Fitton informed Members that he had recently undertaken works to his garden and had put a new fence up. On examining Mr. McDonnell's fence, there had been a large stain next to T1, which smelled of paraffin, and, when the new fence had been installed, there had been a smell of paraffin around the tree.

On finishing his garden, Mr. Fitton had entered his garden one day after work and had been able to smell fresh paraffin/kerosene. He had wiped his hand down the side of the tree where Mr. McDonald had been hacking the trunk and there was fresh kerosene/paraffin down the side of the tree. Mr. Fitton had asked Mr. McDonnell if he had been poisoning the tree, but Mr. McDonnell had denied it.

Members were advised that Mr. Fitton had called a tree surgeon to his property the following day, who had advised Mr. Fitton to contact the Tree Protection Officer, as he was concerned that T1 was in danger of being poisoned or damaged and needed protection.

Following consultation with the Chairman and with the agreement of the Committee, Mr. Fitton circulated papers to Members and the Appellants, showing a record of events in relation to T1, together with photographic evidence. The papers were considered by the parties.

After Mr. Fitton's representation, Members of the Committee had the opportunity to question Mr. Fitton on his representation.

Once there were no further questions, the Chairman asked the Tree Protection Officer to give her representation.

***Lancaster City Council's Tree Protection Officer***

The Tree Protection Officer informed Members that Lancaster City Council had received a request from a member of the public/owner of a mature cherry tree growing within the curtilage of 57 Thirlmere Road, Lancaster to be considered for protection with a Tree Preservation Order. The tree was established in the rear garden of the property, and the

owner wanted the tree to be considered for protection with a Tree Preservation Order to prevent any unjudicial damage to either the above or below ground structures.

The tree, identified as T1, had limited visual benefit beyond its curtilage. However, it was entirely in keeping with its domestic situation, making a positive contribution to greening and partial screening within a heavily urbanised locality.

T1 offered opportunities for a potential range of wildlife, and to provide habitat and foraging opportunities for protected species, including nesting birds and bats, which were protected under the Wildlife & Countryside Act 1981 (as amended), and the Conservation of Habitats and Species Regulations 2010.

Members were advised that consequently care must be taken to ensure that protected species were not disturbed or harmed and, in so doing, avoid a criminal offence from occurring. If protected species were present, work must not start and further appropriate advice must be sought.

T1 had been assessed for its suitability to be protected by a Tree Preservation Order using a Tree Evaluation Method for Preservation Orders (TEMPO). A score of 11 had been achieved, which supported its protection with a Tree Preservation Order.

Tree Preservation Order No. 622 (2017) had been made on 15<sup>th</sup> August 2017 in the interest of public amenity value and wildlife benefit.

One letter of objection had been received from the Appellants dated 25<sup>th</sup> August 2017, and the Appellants had confirmed their objection in a letter dated 2<sup>nd</sup> October 2017. The objection related to the management of overhanging branches from T1 and claims that roots from the tree were disturbing paving stones within the rear garden of the Appellants' property.

The Council had received a letter in support of the Tree Preservation Order dated 6<sup>th</sup> September 2017 from the Supporter, Mr. Fitton.

It was recommended that Tree Preservation Order No. 622 (2017) be confirmed without modification to protect the single mature cherry tree, T1.

Following the Tree Protection Officer's representation on behalf of Lancaster City Council, Members of the Committee had the opportunity to question the Tree Protection Officer on her representation.

The Appellants, Mr. and Mrs. McDonnell; then had the opportunity to reply.

The Supporter, Mr. Fitton, then had the opportunity to reply.

***(The Tree Protection Officer, the Appellants, Mr. and Mrs. McDonnell, and the Supporter, Mr. Fitton, left the meeting room whilst the Committee made its decision in private.)***

Members considered the options before them:

- (1) To confirm Tree Preservation Order No. 622 (2017) -

- (a) Without modification;
  - (b) Subject to such modification as is considered expedient.
- (2) Not to confirm Tree Preservation Order No. 622 (2017).

It was proposed by Councillor Brown and seconded by Councillor Metcalfe:

“That Tree Preservation Order No. 622 (2017) be confirmed without modification.”

Upon being put to the vote, Members voted unanimously in favour of the proposal, whereupon the Chairman declared the proposition to be carried.

***(The Tree Protection Officer, the Appellants, Mr. and Mrs. McDonnell, and the Supporter, Mr. Fitton, returned to the meeting room for the decision to be announced.)***

***Resolved:***

That Tree Preservation Order No. 622 (2017) be confirmed without modification.

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Chairman

(The meeting ended at 2.49 p.m.)

**Any queries regarding these Minutes, please contact  
Jane Glenton, Democratic Services: telephone (01524) 582068 or email  
jglenton@lancaster.gov.uk**